

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. M-05/09-262
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Family Services Division denying the petitioner's request to expunge two reports of child sexual abuse from the child abuse registry. The Department has moved to dismiss based on the petitioner's failure to file her appeal with the Board in a timely manner.

DISCUSSION

In separate incidents that occurred in 1994 and 1995 the Department substantiated two reports involving sexual abuse of the petitioner's children. One report concerned the petitioner placing her children at risk of sexual abuse by living with a convicted child abuser. It appears that this report resulted in the petitioner losing custody of her children at that time through a CHINS proceeding. The second report involved allegations that the petitioner, herself, had sexually abused her children. The petitioner did not appeal

either the CHINS order or either of the Department's substantiation decisions.

In summer 2008 the petitioner filed a request for expungement of these incidents from the Department's child abuse registry. Pursuant to 33 V.S.A. § 4916c(a) the Department held a review hearing on September 30, 2008. In a notice dated November 3, 2008 the Department informed the petitioner that it had denied the petitioner's request to expunge her name from the abuse registry. The Department's notice indicates that the sole basis of the petitioner's appeal was her insistence that the incidents of sexual abuse were unfounded in the first place.

The Department's November 3, 2008 notice included prominent advice that if the petitioner disagreed with the decision she should file an appeal with the Human Services Board within 30 days. The petitioner did not file any appeal of that decision with the Human Services Board until May 8, 2009, more than six months after the date of the Department's notice.

At a telephone status conference held on June 9, 2009 the hearing officer strongly advised the petitioner to try to obtain an attorney, and he continued the matter for 30 days to allow the petitioner to do so.

At a telephone status conference held on July 7, 2009 the petitioner indicated she could not obtain an attorney, and she reiterated that her appeal was based on her denial that the incidents as reported more than fifteen years ago had ever happened. She admitted that she had lost custody of her children over these incidents in 1994, but stated that she was appealing them now because she is not able to visit with one of her grandchildren (who apparently is presently under the Department's supervision) as long as she is on the registry.¹

In response to the Department's motion to dismiss, the petitioner stated that she had delayed filing an appeal of the Department's November 3, 2008 decision because she felt the need to obtain a polygraph test of herself.² The petitioner admits that her decision to get a polygraph test was completely her own, and that it had not been suggested by the Department or by any attorney acting in her behalf.

Human Services Board Fair Hearing Rule No. 1000.2 provides: "As a general matter, timeliness for appeals is

¹ The petitioner maintains that her daughter is too intimidated to challenge these visitation restrictions herself as part of the apparently-ongoing proceedings regarding the petitioner's grandchild.

² The petitioner submitted a copy of the results of a polygraph test, dated May 4, 2009, when she filed her appeal to the Board on May 8, 2009.

based on the statutes and/or regulations governing a particular program." In this case, the pertinent statute is 33 V.S.A. § 4916c(e), which provides, in part:

Within 30 days of the date on which the commissioner mailed notice of the decision pursuant to this section, a person may appeal the decision to the human services board. The person shall be prohibited from challenging his or her substantiation at such hearing, and the sole issue before the board shall be whether the commissioner abused his or her discretion in denial of the petitioner for expungement. . . .

There is no question in this matter the petitioner did not file her appeal with the Board within 30 days. Moreover, she makes no claim either that she did not understand the timeliness provisions as set forth in the Department's notice, or that her failure to file a timely appeal was due to anything other than an unfortunately-misguided tactical decision she made entirely on her own.

ORDER

Inasmuch as the Board's rules and the underlying statute in these matters regarding timeliness are jurisdictional, the petitioner's appeal is dismissed.

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